

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**ARNULFO HERNANDEZ and
JOVITA HERNANDEZ,**

PLAINTIFFS,

VS.

CIVIL ACTION NO. 2:10CV174-P-A

**DESOTO COUNTY SHERIFF'S DEPARTMENT,
ET AL.,**

DEFENDANTS.

ORDER OF PARTIAL DISMISSAL

This matter comes before the court upon Defendants Wayne Pacelle, in his individual capacity and as President of The Humane Society of the United States, and The Humane Society of the United States' March 10, 2011 motion [docket number 9] to dismiss for insufficient service of process. After due consideration of the motion, the court finds as follows, to-wit:

The plaintiffs filed the instant action on October 18, 2010. Defendants Wayne Pacelle, in his individual capacity and as President of The Humane Society of the United States, and The Humane Society of the United States were not served with process until February 22, 2011 – 127 days after the plaintiffs filed their Complaint. Federal Rule of Civil Procedure 4(m) requires the service of process to be effectuated within 120 days after filing of the complaint. Federal Rule of Civil Procedure 12(b)(4) allows a defendant to move for dismissal for insufficient service of process. The defendant filed the instant Rule 12(b)(4) motion on March 10, 2011. As of this date – over four months later – the plaintiff has filed no response.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Defendants Wayne Pacelle, in his individual capacity and as President of The Humane Society of the United States, and The Humane Society of the United States' March 10, 2011 motion

[docket number 9] to dismiss for insufficient service of process is **GRANTED**; accordingly,

(2) The plaintiffs' claims against Wayne Pacelle, in his individual capacity and as President of The Humane Society of the United States, and The Humane Society of the United States are **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED this the 26th day of July, A.D., 2011.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE